

1 of 1

IN the District Court of the United
States for the middle District of Alabama
northern Division

Daniel Strickland, # 201890

Petitioner,

v.

Case NO. 2:07-CV-979-MEF

motion

(to show cause.

1. I the Petitioner Daniel Strickland showing to this Court in Exhibit A. that on the day of Dec 22, 1998, on February 24, 1999 the Court of Criminal appeals dismissed my appeal as being untimely filed. Rule 32.1(F) allows relief when a Petitioner fails to appeal within the prescribed time. I'm showing to the Court a signed document, from Circuit Court Judge, John B. Bush that my Rule 32 was filed.
2. Exhibit B I'm showing to the Court Exhibit B. were Rule 32 was mailed By Fedex
3. Exhibit C, I show to the Court that my legal work was support to Be Delivered over night by Fedex.

4 Exhibit D.

I show the Court that it was not my fault that I did file the Rule 32. it was filed mar 1999.

5. I'm asking this Court to please look over my paper work good. I do have new Evidence. to show the Court. I'm asking the Court to please have mercy on me. and give me the chance to prove I'm not guilty. I do have medical Reports proving that I'm not guilty. it Stateded that I intinimely filed some Paper work. I ask the Court to please. take everything in Consideration,

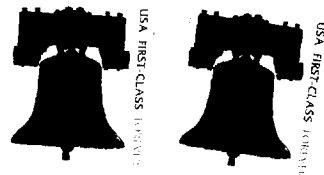
x. Daniel Strickland
Petitioner

I Placed a Copy
of the foregoing in
the United States
mail Box to the
att General. on. 12-15-07

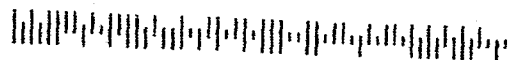
Daniel Strickland, ^{F2} G1-B
#201890 ECF 200 Wallace
Drive Clio MI, 36017

Witnesses 

Daniel Strickland
201890 E2-61 B
200 Wallace Drive
Easterling Cor. Facility
Clus, Al. 36017



United States District Court
P.O. Box 711
Montgomery, Al. 36101-0711

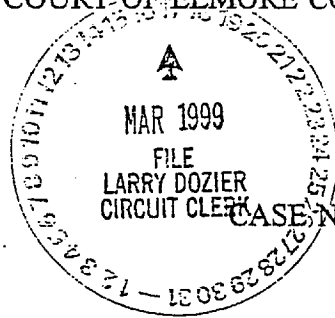


IN THE CIRCUIT COURT OF ELMORE COUNTY, ALABAMA

STATE OF ALABAMA,

V.

GARY DANIEL STRICKLAND.

ORDER ON RULE 32 PETITION

This case is before the Court on Defendant's Petition for Post Judgment Relief pursuant to Rule 32.1(f) Alabama Rules of Criminal Procedure requesting that this Court grant him an out-of-time appeal. Upon consideration of the Petition and supporting documents the Court is of the opinion that it is due to be GRANTED and that the Defendant is to be allowed an out-of-time appeal.

The Defendant was sentenced in the underlying case on November 20, 1998. After his sentencing the Honorable Tommy Goggans was retained to represent him for a possible appeal. A Motion For Judgment Of Acquittal, Or, In The Alternative For A New Trial was filed in the Circuit Clerk's Office of Elmore County on December 22, 1998. A hearing on the motion was held on February 8, 1999 and an order was entered denying the Motion For Judgment Of Acquittal, Or, In The Alternative For A New Trial on February 12, 1999. The Defendant filed a notice of appeal on February 16, 1999 and on February 24, 1999 the Court of Criminal Appeals dismissed his appeal as being untimely filed. The basis for the dismissal apparently was that the Motion For New Trial was filed more than 30 days from the date of sentencing.

Payment Type Detail

Dropped off: Dec 19, 1998

Payor: Shipper

Reference:

• Distance Based Pricing, Region 2

Airbill 5490355124
 Service Type FedEx Standard Overnight
 Package Type FedEx Letter
 Region 2
 Pieces 1
 Weight 0
 Delivered Dec 22, 1998 14:40
 Service
 Area Code AA
 Signed by S.SUMMERLIN

Sender
 TOMMY GOGGANZ
 GOGGANS, THOMAS, ATTORNEY
 529 S PERRY ST STE 14F
 MONTGOMERY AL 36104 US

Recipient
 LARRY DOZLER CLERK
 CIRCUIT COURT OF ELMORE COUNTY
 8935 US HWY 231 N
 WETUMPKA AL 36092 US

Transportation Charges 10.75

Total Transportation Charges USD \$ 10.75

FedEx Internal Use: 035803704/001/_/_

Dropped off: Dec 28, 1998

Payor: Shipper

Reference: 5814

• Distance Based Pricing, Region 3

Airbill 5490355216
 Service Type FedEx Standard Overnight
 Package Type FedEx Letter
 Region 3
 Pieces 1
 Weight 0
 Delivered Dec 29, 1998 14:04
 Service
 Area Code AM
 Signed by S.PHILLIPS -Y

Sender
 TAMMY GOGGANS
 GOGGANS, THOMAS, ATTORNEY
 529 S PERRY ST STE 14F
 MONTGOMERY AL 36104 US

Recipient
 KENNETH S NUNNELLEY
 OFFICE OF THE ATTORNEY GENERAL
 444 SEABREEZE BLVD 5TH FL
 DAYTONA BEACH FL 32118 US

Transportation Charges 11.50

Total Transportation Charges USD \$ 11.50

FedEx Internal Use: 038424409/001/_/_

Dropped off: Dec 28, 1998

Payor: Shipper

Reference: 9814

• Distance Based Pricing, Region 2

Airbill 5490355220
 Service Type FedEx Priority Overnight
 Package Type FedEx Pak
 Region 2
 Pieces 1
 Weight 5.0 lbs
 Delivered Dec 29, 1998 08:34
 Service
 Area Code A1
 Signed by J.WYMENS

Sender
 TOMMY GOGGANS
 GOGGANS, THOMAS, ATTORNEY
 529 S PERRY ST STE 14F
 MONTGOMERY AL 36104 US

Recipient
 THOMAS K KAHN CLERK
 US COURT OF APPEALS CLERKS OFF
 56 FORSYTH ST NW
 ATLANTA GA 30303 US

Transportation Charges 20.5

Total Transportation Charges USD \$ 20.5


FedEx Internal Use: 038424409/001/_/_

Rule 32.1(f) allows relief when a Petitioner fails to appeal within the prescribed time and that failure was without fault on the Petitioner's part. If the failure to timely file the notice of appeal was not the defendant's fault, he is entitled to an out-of-time appeal. Cox v. City of Atmore, 677 So.2d. 818 (Ala.Crim.App. 1996), Starts v. State, 662 So.2d. 1214 (Ala. Crim. App. 1994).

This Court finds that the Defendant's failure to file a timely notice of appeal was not his fault. The Defendant's attorney, Honorable Tommy Goggans, delivered his Motion For New Trial to Federal Express on December 19, 1998 for delivery to the Circuit Clerk of Elmore County on December 21, 1998. For some unknown reason, Federal Express failed to deliver the motion until December 22, 1998. The motion was delivered to Federal Express to be delivered overnight. The next business day would have been December 21, 1998. If the motion had been filed as expected it would have been timely filed and therefore his subsequent notice of appeal to the Court of Criminal Appeals of the State of Alabama would have been timely filed.

Accordingly, since the failure to timely file the Motion For New Trial and hence the failure to timely file the notice of appeal was not the Defendant's fault he is entitled to and is GRANTED an out-of-time appeal.

DONE and ORDERED this 17th day of March, 1999.



John B. Bush, Circuit Judge

IN THE CIRCUIT COURT OF
ELMORE COUNTY, ALABAMA

STATE OF ALABAMA)

V.)

CASE NO. CC-98-262)

GARY DANIEL STRICKLAND¹)

RULE 32 PETITION
(TO ALLOW OUT OF TIME APPEAL)

A. Name and location (city and county) of court which entered judgment of conviction and sentence here under attack: Circuit Court of Elmore County, Wetumpka, Alabama.

B. Date of judgment of conviction: October 5, 1998

C. Date of sentence: November 20, 1998

D. Length of sentence: 25 years (counts 1, 2, and 3 concurrent with each other); 10 years (counts 4, 5, and 6 concurrent with each other and consecutive to 1, 2, and 3); 10 years (counts 7, 8, and 9 concurrent with each other and consecutive to counts 1-6).

E. What as your plea? Not guilty.

F. Nature of offense involved: Rape I, Sodomy I; Sexual Abuse I

G. Kind of trial: Jury

H. Did you testify at trial? Yes.

I. Did you appeal from the judgment of conviction? Yes.

a. As to the state court to which you first appealed, give the following information:

(1) Name of court: Alabama Court of Criminal Appeals

(2) Result: Dismissed

(3) Date of result: February 24, 1999

J. Other than a direct appeal from the judgment of

¹ Petitioner has previously been found indigent.